93-545

Case No. _____

Supreme Court, U.S.
FILED
JUN 22 1993

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

JOHN LAZIRKO
Petitioner

VS

MARGUARITE BRICKMAN-ABEGGLEN
Respondent

PETITIONER FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF OHIO
CUYAHOGA COUNTY

PETITION FOR A WRIT OF CERTIORARI

JOHN LAZIRKO
Petitioner

5845 Amrap Drive
Parma Heights
Ohio, 44130

216-886-2148

QUESTIONS PRESENTED

In the Retrial of Parma Municipal Court Case No. 87-CV-1-1042 Judgement, (issued July 20 1989), the said Court did deny Petitioner-Appellant the rights due the Petitioner under PROCEDURAL LAW. The right to present evidence.

The Court of Appeals of Ohio, Eighth Appellate District, Case No. 59775 Judgement, (issued January 23 1992), was so blatant with obvious , deliberate, errors that it also abrogated the PROCEDURAL LAW.

PROCEDURAL LAW - Procedural Due Process - The guarante of Procedural fairness which flows from both the Fifth and Fourteenth Amendments Due Process clauses of the Constitution.

Are not these Judgement's subject to -

"Judgement is a 'VOID JUDGEMENT' if Court that rendered Judgement lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process." ?

Klugh V. U.S. DCSC.,620 F.Supp 892,901.

PARTIES TO THE PROCEEDING

1. MARGUARITE BRICKMAN-ABEGGLEN

   4708 Marcie Drive
   Cleveland, Ohio 44109

2. JUDGE KENNETH R. SPANAGEL

   Parma Municipal Court
   5750 West 54th Street
   Parma, Ohio 44129

3. JUDGE LEO M. SPELLACY presiding
   JUDGE P.J. DYKE concuring
   JUDGE J. NAHRA concuring

   Court of Appeals of Ohio
   Eighth Appeallate District
   Cuyahoga County Court House
   1 Lakeside Ave.
   Cleveland, Ohio 44113-1085

4. THOMAS J. MOYER

   Supreme Court of Ohio
   30 E. Broad Street
   Columbus, Ohio 43266-0419

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TABLE OF AUTHORITIES

NATIONAL CONSTITUTION

1. Amendment V

2. Amendment XIV

CONSTITUTION OF THE STATE OF OHIO

BILL OF RIGHTS

1. Article 1, Section 16

RE : LAWS & STATUTES

1. Klugh v. U.S. DCSC., 620 F.Supp 892, 901.

2. Graff v. Kelly, Okl., 771 P.2d 489 (1991)

3. Pennsylvania Co. v. Potter 233 P. 700, 701,108 Okl 49

CONSTITUTIONAL PROVISIONS
&
STATE OF OHIO PROVISIONS

At issue in this proceeding are:

1. Amendment V of the National Constitution Of The United States, which provides in part -

> No person shall be deprived of Life, Liberty, or property, without due process of Law.--

2. Amendment XIV of the National Constitution of the United State. Section 1 in total.

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without Due Process of Law; nor deny to any person the Equal Protection of the Laws.

At issue, but not relevant here.

STATE OF OHIO CONSTITUTION

1. Article 1, Section 16

LAW & STATUES

1. Klugh v. U.S. DCSC., 620 F.Supp 892, 901.

"Judgement is a 'VOID JUDGEMENT' if Court that rendered Judgement lacked Jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with Due Process."

2. Graff v. Kelly, Okl., 771 P2d 489 (1991)

"VOID JUDGEMENT," such as may be vacated at any time, is one whose invalidity appears on face of Judgement Roll".

3. Pennsylvania Co. v. Potter, 233 P. 700, 701, 108, Okl. 49

A "VOID JUDGEMENT" within the meaning of Rev.Laws 1910, -5274, 12 Okl.st Ann - 1038, is: 'A judgement which is void upon its face and requires only an inspection of the Judgement Roll to demonstrate its want of validity'.

OPINIONS BELOW

Landlord-Tenant dispute, within Territorial Jurisdiction of Parma Municipal Court.

April 14 1987: Small Claims complaint filed by Marguarite Brickman-Abegglen, Appellee, asking for - $826.97. Countercomplaint filed by John Lazirko, Appellant. Asking for $1109. in stolen property and damaged.

Oct. 30 1987: Referee's Recomendation filed. Appellee awarded $592.09. Appellant filed Appeal, Parma Municipal Court.

Dec. 27 1987: Judgement of Judge George W. Spanagel. Referee's Recomendation upheld.

Appellant appealed to Ohio Court of Appeals, Eighth District, County of Cuyahoga.

April 11 1988: Judgement issued, Ohio Court of Appeals, Eighth District. Case

No. 55203. Judgement for Appellant.

"Judgement - REVERSED AND REMANDED."

"This cause is reversed. Defandant's counterclaim is reinstated. Case remanded for new trial."

"It is, therefore, considered that said Appellant recover of said Appellee his costs herein."

Judge Blanche Krupansky
presiding Judge

STATEMENT OF THE CASE

The Petitioner does state, Petitioner is not a member of the 'Bar of This Court', nor is the Petitioner an attorney, but does claim this "WRIT OF CERTIORARI" as a right. To explain the Petitioner's reason for requesting this 'WRIT' to this Court, is simple.

1. For over 1 year the Petitioner has been under a cloud of accusation's by Appellee, Parma Referee's Court and Parma Municipal Court. Parma Municipal Court Case No. 87-CV-1-1042.

2. Petitioner appealed to Ohio Appeals Court, Eighth District of Ohio. Judgement was for Petitioner-Defendant. " REVERSED AND REMANDED ". Judge Blanche Krupansky presiding. Ohio Court of Appeals, Case No. C of A 55203.

3. Retrial was held, Judgement of Parma Municipal Court retrial of Case No. 87-CV-1-1042, Judgement for Appellee. Judge Kenneth R. Spanagel presiding.

4. In said retrial, Petitioner was denied permission to present evidence from any Court Case, or ruling, of this cited Case. Including Ohio Court of Appeals Case No. 55203. Petitioner appealed Judgement of cited retrial to Parma Municipal Court. this Appeal was never answered, to this day.

5. Petitioner appealed cited retrial Judgement - Ohio Appeals Court, Eighth District. Oral hearing was held, Judge M. Spellacy presiding. Case No. 59775. Judgement of cited Case No. 59775, was NOT for Appellee. The Judgement rendered was, 'on the face', for Judgement of Parma Municipal Court retrial Judgement.

6. Upon filing appeal with Court of Common Pleas, Cuyahoga County, Petitioner was advised by Court Attorney, of cited Court, to address the Supreme Court of Ohio. Petitioner did so, not once but twice, Both time's Peti-

tioner's 'Memorandum in Support of Jurisdiction' and the 'Request for Rehearing' were dismiss and denied - sua sponte- by the Chief Justice of the Ohio Supreme Court, Thomas J. Moyer.

Petitioner does not believe that he has experienced Justice by logic or under Law, but by men. (with the exception of the Reversed and Remanded Order of Judge Blanche Krupansky, of course).

John Lazirko

Parma Heights,
Ohio
44130

JURISDICTIONAL GROUNDS

UNITED STATES CODE
ANNOTATED

Title 28. 1257 (16)

SUPREME COURT JURISDICTION
Para. 5

A State Court Judgement, to be within Appellate Jurisdiction of United States Supreme Court, must be "Final" in two senses: It must be subject to no further view or correction in any other State tribunal, and must be an effective determination of the litigation and not of merely interlocutory or intermediate steps therein: It must be the final word of a final Court.

Market St. Ry. Co. v Ry. Com. of State of Cal. Cal. 1945

Petitioner, does also request a reading of Rule 10 (C), as listed in 'Rules of the Supreme Court of the United States'

Upon September 25 1992, Petitioner did file 'Notice of Appeal' to the Supreme Court of Ohio. A one page notice, the last paragraph, in full, being - 'Both Cases involved substantial Constitutional question's, under Article 1, Sec. 16 of the Constitution of Ohio and also under the 14th Amendment, Sec 1, of the Constitution of the United States'.

A P P E N D I X

STATEMENT OF THE FACTS

1. Small Claims Complaint filed, April 14th 1987, by Marguarite Brickman-Abegglen, being duly sworn, on oath, states she is the Plaintiff. Asking for $826.27.

2. CounterClaim submitted by John Lazirko, Defendant. Requesting Judgement for $1109.83 for stolen property and damages.

3. Trial held (Referee's Court) June 1 1987. A.G. Schleicher presiding.

4. Referee's Recommendation filed Oct. 30 1987. Judgement for Plaintiff in the amount of $592.02

5. Defendant filed appeal, Parma Municipal Court Case 89-CV-1-1042.

6. Judgement upon Defendants appeal filed Dec. 21 1987. Referee's Recommendation upheld. Judge George W. Spanagel presided.

7. Defendant filed appeal with OhioCourt of Appeals, Eighth District, Jan 11 1988.

8. "Notice to Judgement Debtor, John Lazirko, of Garnishment of Property other

than personal earnings ", filed in the Parma Municipal Court by Parma Municipal Court.

9. Feb. 2 1988 - Appeals for relief from "Notice of Garnishment" filed with Parma Munical Court by Defendant, citing Rules of Ohio Court of Appeals. Parma Municipal Court never - repeat - never answered appeal to this day, nor did Parma Municipal Court take any action of any sort on said "Notice of Garnishment."

10. Mar. 15 1989, Oral argument held at Ohio Court of Appeals, Case No. C of A 55203.

11. April 6 1989, Journal Entry and Opinion of Ohio Court of Appeals filed, Case No. 55203 - Parma Municipal Court Case No. 87-CV-1-1042 - Reversed and Remanded. " It is, therefore, considered that said Appellant recover of said Appellee his costs herein".

12. Notice from Parma Municipal Court of Retrial of Case No. 87-CV-1-1042. Judge Kenneth Spanagel to preside.

13. June 13th 1989: Retrial of cited case was held. Appellee Marguarite Brickman-Abegglen was not present, at any time during Retrial. Acting Appellee was permitted to change his testimony from former-prior Cases of Case 87-CV-1-1042. Appellant was not permitted to present any evidence from any former Court Actions of this cited Case.

14. July 20 1989, Judgement of Retrial of cited Parma Municipal Case issued. Judgement for Appellee. for $384.00 plus cost of Retrial and interest to Appellee from April 15 1987.

15. Appeal of Retrial Judgement filed with Parma Municipal Court, Aug 2 1989, citing ERRORS OF LAW, ERRORS OF FACT, and acting Appellee had perjured his former testimony. In the first week of November 1989, Appellant did approach Baliff of Judge Kenneth Spanagel, Edward Hudak, requesting an audience with Judge Kenneth Spanagel, pertaining to the submitted appeal. Baliff Hudak

returned with the statement 'the Judge will not discuss the appeal with you'.

Parma Municipal Court never - repeat - never answered filed appeal, in any way.

16. June 1 1990. Appellant did file appeal with Ohio Court of Appeals, Eighth District, Cuyahoga County. Appellants Brief followed.

17. January 11 1992, Oral hearing of Ohio Court of Appeals Case No. 59775.

18. January 23 1992, Judgement of Ohio Appeals Case No. 59775 rendered. "MODIFIED, AND AS MODIFIED AFFIRMED". Judgement for Appellee for $350.14. Said Judgement contained many miss-statements and errors.

19. Appellant, upon advise of Court Attorney of Common Pleas Court of Cuyahoga County, Ohio, did address The Ohio Supreme Court, Columbus, Ohio. Filing notice of appeal.

20. October 21 1992, Appellants MEMORANDUM IN SUPPORT OF JURISDICTION filed

with the Supreme Court of Ohio.

21. January 27 1993, "ENTRY issued by Supreme Court of Ohio, Chief Justice, "Dismissed, sua sponte, for reason that no substantial constitutional question exists herein". Supreme Court of Ohio, Case No. 92-2103.

22. March 5 1993, Appellant filed "MOTION FOR RECONSIDERATION", with Supreme Court of Ohio.

23. March 24 1993, "ENTRY" issued from Ohio Supreme Court. "REHEARING ENTRY DEnied, Thomas J. Moyer, Chief Justice.

QUESTION'S PRESENTED

(1)

PARMA MUNICIPAL COURT
5750 West 54th Street
Parma, Ohio 44129

Case No. 87-CV-1-1042
Retrial
Judge presiding
Kenneth R. Spanagel

If the Court, in the retrial of Case No. 87-CV-1-1042, did deliberatly deny the Petitioner the right to present any evidence inherent in all transcripts of previously held Court's of this cited case, while permitting acting Appellee to change his testimony as stated in the previously cited cases. Did not Parma Municipal Court abrogate Petitioner's basic rights under the 14th Amendment of the National Constitution, denying Petitioner, deliberatly, a fair trial by "Due Process of Law"?.

(2)

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
1 Lakeside Ave., Cleveland,
Ohio 44113-1085

Case No. 59775
Judge presiding
Leo M. Spellacy

When 3 members of the Judiciary, with long experience, commit more than 3 error's of fact in one Case (Case 59775), is there not cause to believe that there was a deliberatly planned effort to place a predetermined Judgement into effect? Petitioner believes that his inalienable right of "Equal Protection of the Laws" of the 14th Amendment was denied him in Court of Appeals Case No. 59775.

(3)

SUPREME COURT OF OHIO
30 E. Broad Street
Columbus, Ohio
43266-0419

Case No. 92-2103
Thomas J. Moyer
Chief Justice

re: Eighth District Court of Appeals of Ohio, Case No. 59775. The Chief Justice, Supreme Court of Ohio, did dismiss, sua sponte, said cited Case for the reason that no substantial Constitutional question exists there in. Is there a Constitutional question involved - if Judgement of said cited Case was based upon error's of fact? Thus depriving Petitioner of a fair Judgement under the "Due Process of Law" standard of the 14th Amendment. The most blatant error being in the 'Judgement' of Eighth District Court of Appeals of Ohio, Case No. 59775. - Page 8, last paragraph, Page 9, lines 1 and 2.

-Quote-

"In the instant case, the trial court judge had previously reviewed the finding's of the referee and issued a judgement accordingly. Obiously,the trial court judge was well aware of what had transpired at the referee hearing and was quite familiar with all parties and their respective testimonies. Thus, we conclude that it was harmless error for the trial courtjudge to prohibit appellant from referring to the transcript of the referee's hearing."

-Unquote-

Petitioner now states - it was NOT the trial Court Judge that had previously reviewed the Referee's report and issued Judgement. The reviewing Judge was Judge George W. Spanagel.

- Journal Entry, December 21 1987 Retrial Judge being Judge Kenneth R. Spanagel

- June 13 1989...Retrial held.

(4)

THE SUPREME COURT OF THE
UNITED STATES
WASHINGTON D.C. 20543

Case No._____

With the Judgement of REVERSED AND REMANDED. in effect, Parma Municipal Court choose to ignore it. Case No. 87-CV-1-1042 retrial became 'Ex Parte', even though the duly sworn Appellee was absent from said cited Court. Judgement for Appellee.

From the retrial of cited Parma Municipal Court Case, through Ohio Appeals Case No. 59775, (Judgement for Parma Municipal Court Judgement, in fact), through 'MEMORANDUM IN SUPPORT OF JURISDICTION' to Ohio Supreme Court, (Dismissed, sua sponte), through 'REQUESTED REHEARING ENTRY' to Ohio Supreme Court (denied), there appears to be a PATTERN OF PROTECTIONISM of Parma Municipal Court Judgement of cited retrial. Is this not in 'total violation' of the 14th Amendment of the National Constitution?.

The Petitioner request's the answer, of This August Court, as to whether each of these cited Case's or orders, are so one sided as to subject them to -

Item:

"A Judgement, or order, is 'VOID ON IT'S FACE' when invalidity is apparent upon inspection of Judgement Role".

CONCLUSION

This Petitioner does pray that this August Court does take this Writ Of Certiorari into their concideration, for Justice is of great importance to this American.

John Lazirko

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